THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 19302 of 2006

Date: 25.10.2007

Between:

Yasalapu Sanjeevi.

..... PETITIONER

AND

The Depot Manager, APSRTC,
Simhachalam, Visakhapatnam and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 19302 of 2006

Order:

Assailing the award dated 28.09.2005, passed by the Labour Court, Visakhapatnam, in I.D. No. 135 of 2002, the petitioner filed the present writ petition.

The petitioner was appointed as Conductor in the respondent-APSRTC on 01.03.1990. On 11.11.2000, while the petitioner was conducting the bus on the route Simhachalam to OHPO, a check was exercised, and the checking officials having found grave cash and ticket irregularities, issued charge memo to the petitioner. Subsequently, the respondent-APSRTC placed the petitioner under suspension, and as many as 24 charges were framed against him. The petitioner submitted his explanation denying the charges framed against him. Dissatisfied with the same, an enquiry was conducted, and the Enquiry Officer, who conducted enquiry into the charges leveled against the petitioner, submitted his report holding that the charges are proved. Based on the enquiry report, the

1st respondent, namely the Depot Manager issued notice to the petitioner, calling upon him to show cause as to why he should not be removed from service. The petitioner submitted his explanation thereto. However, vide proceedings dated 17.09.2001, the 1st respondent removed the petitioner from service. Assailing the order of removal, the petitioner preferred an appeal before the appellate authority, which was rejected. Thereafter, he raised an industrial dispute in I.D. No. 135 of 2002 before the Labour Court, which by award dated 28.09.2005, dismissed the same, upholding the orders of the disciplinary authority. Assailing the said award, the petitioner filed the present writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent-APSRTC and perused the material on record.

The main contention advanced by the learned counsel for the petitioner in this writ petition is that the respondent-APSRTC violated the principles of natural justice and have not supplied the copy of enquiry report to the petitioner to submit his remarks/objections, and therefore, the punishment imposed against the petitioner, without providing him the reasonable opportunity, is void and liable to be set aside. He further contends that though the said objection was raised before the Labour Court, it failed to consider the same and erred in confirming the punishment awarded by the disciplinary authority.

To appreciate the said contention, I have perused the entire original record of the Labour Court. Ex.M23 is the letter dated 26.06.2001 addressed by the Depot Manager, Simhachalam, to the petitioner. A perusal of the said letter clearly shows that the Depot Manager, Simhachalam, while enclosing the copy of enquiry report directed the petitioner to submit his remarks/comments on the enquiry report within seven days from the date of receipt of that letter. Later on, the petitioner submitted a detailed explanation on 16.09.2001 under Ex.M25, but nowhere in the said explanation he stated that the copy of enquiry report was not supplied to him. Though the petitioner raised a contention before the Labour Court that he was not supplied with the copy of enquiry report, he has not adduced any evidence or produced any material before the Labour Court to prove such a contention and to show that any prejudice is caused to him by such alleged non-supply of enquiry report in putting forward his defence. On the other hand, the Labour Court, while deciding the validity of the domestic enquiry as a preliminary issue, found that the petitioner, having received the copy of enquiry report, submitted his explanation and participated in the enquiry through out, and accordingly, by order dated 04.10.2004, it held that the domestic enquiry conducted by the respondent-APSRTC is valid. More

over, the petitioner also failed to show before this Court that by not supplying the copy of enquiry report any prejudice is caused to him in putting forward his defence. In the circumstances, the contention of the petitioner that the respondent-APSRTC violated the principles of natural justice and have not supplied the copy of enquiry report to him cannot be accepted,

Even on merits also, as can be seen from the award of the Labour Court, as many as 24 charges were framed against the petitioner alleging that with a fraudulent intention he has taken ticket bundles of Rs.4.75 and Rs.3.75 denominations in separate tray in addition to the tray allotted to him and mentioned in the way bill and sold some of the tickets in those bundles apart from the tickets allotted in his tray as per the way bill and misappropriated an amount of Rs.6,868.25 ps. The charges leveled against the petitioner, stood proved in the departmental enquiry. The disciplinary authority, considering the nature of the proved charges, imposed punishment of removal from service. The Labour Court, having found that the petitioner, having collected requisite fare from the passengers, issued unconnected tickets and intentionally committed serious cash and ticket irregularities, held that the punishment of removal from service imposed by the disciplinary authority is proportionate to the proved charges. The findings arrived at by the Labour Court being based on proper appreciation of the evidence on record, I see no reason whatsoever to interfere therewith, more so when the charges leveled against the petitioner stood proved in the departmental enquiry and the petitioner also failed to point out any infirmities in the conduct of the departmental enquiry.

In **Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane**[1], the apex Court held that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the appellate tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. On the question of quantum

of punishment, the apex Court held as follows:

> Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration.

In the instant case, the charges leveled against the petitioner stood proved, and having regard to the gravity and seriousness of the proved charges, the 1st respondent-Depot Manager having lost confidence in the petitioner, removed him from service. In such circumstances, I am of the considered opinion that no interference is called for with the impugned award passed by the Labour Court, which upheld the punishment of removal from service imposed on the petitioner by the disciplinary authority, as confirmed by the appellate authority.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 25.10.2007
Nsr

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[1] (2005) 3 SCC 254